

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NIKE, INC.,

Plaintiff,

vs.

LI MEI, individually, and related LESSEES AND
TENANTS OF ROOMS 1007A, 1013A, 1014A,
1018A, 1075B and B028B AT GIBRALTAR
STORAGE, LLC; and UNIDENTIFIED TENANTS
1-20 AT GIBRALTAR STORAGE, LLC,

Defendants.

13-CV-7157

**PRELIMINARY INJUNCTION AND
ORDER CONFIRMING THE SEIZURE**

JOHN GLEESON, United States District Judge:

WHEREAS, this action having been commenced by Plaintiff Nike, Inc. (hereinafter referred to as "Nike" or "Plaintiff") on December 16, 2013, against defendants LI MEI, individually, and related LESSEES AND TENANTS OF ROOMS 1007A, 1013A, 1014A, 1018A, 1075B and B028B AT GIBRALTAR STORAGE, LLC; and UNIDENTIFIED TENANTS 1-20 AT GIBRALTAR STORAGE, LLC (collectively the "Defendants"), alleging trademark counterfeiting and infringement of Plaintiff's trademarks, and charging Defendants with, *inter alia*, trademark counterfeiting and trademark infringement; and a copy of the Summons, Complaint, Declarations of Richard Conte, John Macaluso, and Lori Colbert, and Temporary Restraining Order, Seizure Order and Order to Show Cause signed by Judge Pamela K. Chen on December 17, 2013 and amended and re-signed on December 18, 2013 (the "Order"), having been served on December 21, 2013 upon the following Defendants, doing business at Gibraltar Storage, LLC located at 184-08 Jamaica Avenue, Hollis, NY 11423, in the following storage rooms: Li Mei, individually, and related lessees and tenants of rooms 1014A, 1018A, 1075B and B028B; Hua Guam, individually, and related lessees

and tenants of room 1074B; Lisa Huang, individually, and related lessees and tenants of room 1002A; Jose Beltran, individually, and related lessees and tenants of rooms 1003A, and 1434G; San Yang, individually, and related lessees and tenants of room 1428G; Nango, individually, and related lessees and tenants of room 2002A; Ango Angbsa, individually, and related lessees and tenants of rooms 2004A; and unidentified lessees and tenants of rooms 1007A and 1013A. Copies of the U.S. Marshals Service Return of Service Forms (USMS Form 285) confirming the seizure from and service upon the above listed individuals and room numbers are attached hereto as Exhibit 1.

It appearing to the Court that it has jurisdiction over the subject matter of this action, over the Plaintiff and over the Defendants; and

A hearing on the Order to Show Cause occurred on January 6, 2014, at which the Defendants did not appear; and

After the Court's due consideration of the Complaint and the exhibits thereto, the Order to Show Cause and accompanying papers and there being no opposition from or appearance by Defendants, in fact complete non-participation by the Defendants up to the present time, the Court makes the following findings of fact and conclusions of law:

1. Nike owns and controls the following U.S. Registered Trademarks:

Trademark	Registration Number	Registration Date	Class(es)/Goods
NIKE	978, 952	February 19, 1974	(Int'l Class : 25) Athletic Shoes With Spikes And Athletic Uniforms For Use With Such Shoes; Athletic Shoes Without Spikes And Athletic Uniforms For Use With Such Shoes.

NIKE	1,277,066	May 8, 1984	(Int'l Class : 25) Athletic And Casual Clothing For Men, Women And Children-Namely, Shirts, Pants, Shorts, Jackets, Warm-Up Suits, [Swimwear, Tenniswear, Skirts, Sweaters, Underwear,] Headwear, Socks [And Wristbands].
	1,323,343	March 5, 1985	(Int'l Class : 25) Footwear.
	1,284,385	July 3, 1984	(Int'l Class : 25) Athletic And Casual Clothing For Men, Women And Children-Namely, Shirts, Pants, Shorts, Jackets, Warm-Up Suits, Swimwear, Tenniswear, Skirts, Sweaters, Underwear, Headwear, Socks And Wristbands.
	1,325,938	March 19, 1985	(Int'l Class : 25) Footwear.
	1,237,469	May 10, 1983	(Int'l Class : 25) Athletic And Casual Clothing For Men, Women And Children-Namely, Shirts, Pants, Shorts, Jackets, Warm-Up Suits, ((Swimwear,)) [Tenniswear, Skirts,] Sweaters, ((Underwear,)) Headwear, And Socks, [Wristbands And] ((Handwear)).
	1,284,386	July 3, 1984	(Int'l Class : 25) Footwear.

	1,571,066	December 12, 1989	(Int'l Class : 25) Clothing, Namely T-Shirts [Pullovers, Sweatshirts ((Jackets, [Pants,] Shorts And Socks))].
	1,558,100	September 26, 1989	(Int'l Class : 25) Footwear, T-Shirts, Shorts, Pullovers, Pants, Warm-Up Suits And Tank Tops.
AIR FORCE I	3,520,484	October 21, 2008	(Int'l Class : 25) Footwear.
AIR MAX	1,508,348	October 11, 1988	(Int'l Class : 25) Footwear.

(hereinafter collectively referred to as the “Nike Registered Trademarks”). Copies of the Nike Registered Trademarks are attached to the Complaint filed on December 16, 2013 as Exhibit 1.

2. Defendants are not licensed or otherwise authorized by Plaintiff to use the Nike Registered Trademarks.
3. It appears that the merchandise seized from the Defendants are those bearing “counterfeit marks,” as defined in 15 U.S.C. § 1116(d), of the Nike Registered Trademarks (the “Counterfeit Goods”).
4. Defendants manufacture, distribution, offer for sale and sale of the Counterfeit Goods would cause confusion, mistake or be likely to deceive purchasing consumers or cause post consumer confusion, and would constitute trademark infringement and false designations of origin according to 15 U.S.C. § 1114(1) and 15 U.S.C. §

1125(a), respectively.

5. This Court has the power to grant ex parte seizures pursuant to 15 U.S.C. § 1116(d) and has the power to enjoin any violations of 15 U.S.C. § 1114(1) and 15 U.S.C. § 1125(a).
6. Plaintiff has shown that it is likely to succeed in its claim against the Defendants for infringing the Nike Registered Trademarks and, unless enjoined, the Defendants are likely to continue to use counterfeit and/or infringing marks in connection with the manufacture, distribution, offer for sale and sale of the Counterfeit Goods.

NOW THEREFORE, it is hereby ORDERED as follows that:

1. Defendants and their respective officers, agents, servants, employees and attorneys, and all persons in active concert and participation with them are hereby restrained and enjoined, pending termination of this action:
 - a) From using the Nike Registered Trademarks in any unauthorized manner.
 - b) From possessing, receiving, manufacturing, distributing, advertising, promoting, returning, offering for sale or otherwise disposing of in any manner, holding for sale or selling any goods, labels, tags, logos, decals, emblems, signs, and other forms of markings, any packaging, wrappers, pouches, containers and receptacles, and any catalogs, price lists, promotional materials and the like bearing a copy or colorable imitation of the Nike Registered Trademarks;
 - c) From using any logo, trade name or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the services or products

of Defendants are sponsored by, authorized by, or in any way associated with the Plaintiff;

- d) From infringing the Nike Registered Trademarks;
- e) From otherwise unfairly competing with Plaintiff;
- f) From falsely representing themselves as being connected with Plaintiff or sponsored by or associated with Plaintiff;
- g) From using any reproduction, counterfeit, copy, or colorable imitation of the Nike Registered Trademarks in connection with the publicity, promotion, sale, or advertising of goods sold by Defendants including, without limitation, footwear and apparel bearing a copy or colorable imitation of the Nike Registered Trademarks;
- h) From affixing, applying, annexing, or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent such goods as being those of Plaintiff and from offering such goods in commerce;
- i) From using any trademark or trade name in connection with the sale of any goods which may be calculated to falsely represent such goods as being connected with, approved by or sponsored by Plaintiff; and
- j) From destroying, altering, disposing of, concealing, tampering with or in any manner secreting any and all business records, invoices, correspondence, books of account, receipts or other documentation relating or referring in any manner to the manufacture, advertising, receiving, acquisition, importation, purchase, sale or offer for sale, or distribution of any merchandise bearing the Nike Registered Trademarks;

And it is further ORDERED:

2. That Defendants, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them are hereby enjoined, from transferring, discarding, destroying or otherwise disposing of the following in the possession, custody or control of the Defendants:
 - (a) All merchandise bearing any copy or counterfeit of the Nike Registered Trademarks or any markings substantially indistinguishable therefrom;
 - (b) All labels, tags, logos, emblems, signs, and other forms of markings, all packaging, wrappers, pouches, containers, receptacles, and all advertisements, catalogs, price lists, guarantees, promotional materials and the like bearing any copy or counterfeit of the Nike Registered Trademarks or any markings substantially indistinguishable therefrom, and all plates molds, dies, tooling, machinery, assembly equipment and other means of making the same; and
 - (c) All books and records, whether in written, digital or electronic form, showing:
 - (i) Defendants' manufacture, receipt and sale of merchandise bearing the Nike Registered Trademarks;
 - (ii) Defendants' manufacture, receipt and sale of any labels, tags, logos, decals, emblems, signs, and other forms of markings, any packaging, wrappers, pouches, containers and receptacles, and any catalogs, price lists, guarantees, promotional materials and the like bearing the

aforesaid trademarks, either by reference to the Nike Registered Trademarks or by style or code number or otherwise.

3. This Preliminary Injunction Order is issued without the posting by Plaintiff of any additional bond.

4. The \$50,000 bond posted by the Plaintiff in compliance with the Order may be replaced by a bond in the amount of \$5,000.

5. The seizure(s) that took place pursuant to the Order is/are hereby confirmed.

6. The case shall be unsealed pursuant to 15 U.S.C. § 1116(d)(8), except for the complaint (ECF No. 1), which shall remain under seal to protect the identity of the plaintiff's private investigator. Plaintiff is ordered to refile the complaint and all supporting documents, including a redacted version of the private investigator's declaration dated December 12, 2013, by January 7, 2014.

SO ORDERED.

John Gleeson, U.S.D.J.

Dated: January 6, 2014
Brooklyn, New York